

**KINGS COUNTY SUPREME COURT
HELP CENTER ROOM 122C
360 ADAMS STREET
BROOKLYN, NY 11201**

This summary will **BRIEFLY** describe how to serve legal papers when commencing an action or proceeding. It is not intended to be a substitute for legal research or representation. **ANYONE INTERESTED IN BEGINNING A LAWSUIT IS STRONGLY ENCOURAGED TO SEEK LEGAL COUNSEL. THE HELP CENTER CANNOT PROVIDE YOU WITH LEGAL ADVICE OR COMPLETE FORMS ON YOUR BEHALF.**

**HOW TO SERVE LEGAL PAPERS
WHEN COMMENCING AN ACTION OR PROCEEDING**

Providing legal papers to other parties in a case is known as service. Service of papers that **commence** a case is referred to as **service of process** and must be accomplished in a special manner, described below. Service of **subsequent papers**, however, may usually be done by mailing. Rules regarding service must be strictly observed, especially with respect to service of process, since service gives notice of the existence of the case.

Service of the Initiating Papers

The summons with notice, summons, and complaint, or notice of petition and petition are referred to as **initiating papers**. The law requires that all other parties be formally notified that a case has been commenced before a plaintiff or petitioner may obtain the relief demanded. Therefore, initiating papers must be served on all defendants or respondents **in the manner specified by the Civil Practice Law and Rules (“CPLR”)**. **Please refer to Exhibit A for a copy of an Affidavit of Service of Initiating Papers.**

A person serving the papers must be 18 years of age or older and **must not** be a party to the case. Papers may be served by a process server or a friend or relative so long as that person is not a party to the case.

Service upon a governmental agency: The City of New York shall be served by personal delivery of the initiating papers to **Corporation Counsel** or to **any person designated** to receive process in a writing, filed in the office of the clerk of New York county. **Personal service on the State of New York** shall be made by delivering the process to an Assistant Attorney General at an office of the Attorney General or to the Attorney General within the State. **Service on a state officer** who is sued solely in an official capacity, or a state agency shall be made by personal delivery to such officer, or to the chief executive officer of such agency, or to a person designated by the chief executive officer to receive service. **As an alternative**, service on such officer may be made by taking the following two steps: 1) **mailing** the papers by certified mail, return

receipt requested, to the officer or chief executive officer of the agency, and 2) **personal service** on the State of New York in the manner described above.

Service upon a corporation shall be made by delivering the initiating papers to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service.

Personal service upon a natural person shall be made by one of the following methods:

a) **Personal Delivery:** delivering the initiating papers within New York to the person to be served, or

b) **Substituted Service** (in 2 steps): **by 1)** delivering the papers within New York to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served, and **then 2)** also mailing the papers by first class mail to the person to be served at his or her last known residence or actual place of business in an envelope marked “**personal and confidential**” and must not indicate on the outside, in any way, that the contents concern a court case. You must complete both steps when using substituted service.

c) **Serving an Agent:** delivering the process within New York to a designated agent for the service of process.

d) **“Nail and Mail” Service:** if your repeated attempted to serve the other parties by personal and substituted service have failed, you may try the following **two step procedure:** 1) affix the summons to the door of the actual place of business, dwelling place, or usual place of abode within New York State of the person to be served, and 2) mail the initiating papers by first class mail to the person to be served at her or her last known residence or actual place of business in an envelope marked “**personal and confidential**” with no indication on the outside that the contents concern a court case. The affidavit of service by “nail and mail” must indicate all the prior attempts at personal and substituted service.

Timeliness and Filing Proof of Service of Initiating Papers

Before the papers are served, you must file your papers and obtain an index number in the County Clerk’s Office (**Room 189**) **before the statute of limitations has expired.** If you are bringing a special proceeding or an action in which the statute of limitations is four months or less, the papers must, after timely filing with the County Clerk, **be served no later than 15 days after the date when the statute of limitations expires.** A **summons with notice** or **summons and complaint** must be served within **120 days of filing with the County Clerk.**

After service of process, the person who served the papers must fill out a statement, called an **affidavit of service**, which is sworn to and signed in front of a notary. The affidavit of service must state the date, place, and time when the papers were served, and include a description of the person served. The description must state the sex, skin

color, hair color, and approximate age and weight of the person served. If substituted or nail and mail service was used, the affidavit of service must be filed with the County Clerk, Room 189, within **20 days of the date of service**.

Service an Order to Show Cause

When a case is begun by **order to show cause**, service is performed in the manner ordered by the Court. Personal service is usually ordered. A copy of the affidavit of service should be filed with the County Clerk immediately after service, and the original affidavit of service is submitted to the court when the case is called on the return date. If service cannot be made in the manner ordered by the court, the court may, after written application, permit service by other means.

Service of Subsequent Papers

After the case is commenced and all parties have received notice of its existence, papers may usually be served with less formality. A person aged 18 or over **who is not a party to the case** shall serve papers but mailing or delivering papers to the office of the attorney is permitted. Subsequent papers must be served on all parties to the case, even if the focus of the papers is only one party or a few parties; everyone has a right to know what is taking place in the case.

Service of a Subpoena

A subpoena is used to compel a person who is not a party to a case to testify at trial or hearing, or to submit to a deposition (unless the person agrees to testify voluntarily). A subpoena may also require production of documents. A self-represented person must prepare the subpoena and submit it to the court to be "So Ordered". After issuance by the court, the subpoena must be served in the same manner as a summons.

For more information on filing a subpoena, request a copy of the "Subpoena Filing Instructions" packet from the Help Center, Room 122C or obtain a downloadable copy from the court website.

EXHIBIT A

INSTRUCTIONS: THIS AFFIDAVIT MUST BE USED FOR SERVICE OF INITIATING PAPERS (ASUMMONS AND COMPLAINT, SUMMONS WITH NOTICE, NOTICE OF PETITION AND PETITION, OR ORDER TO SHOW CAUSE AND PETITION). SERVER MUST SIGN HIS/HER NAME IN THE PRESENCE OF A NOTARY PUBLIC. PRINT AND USE BLACK INK ONLY. FILL IN THE NAMES OF THE PARTIES AND COMPLETE THE BLANK SPACES PRINTED IN BOLD TYPE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

Index No. _____
[INSERT INDEX NUMBER]

_____,
[FILL IN NAME(S) OF PLAINTIFF(S)/PETITIONERS)]

Plaintiff(s)/Petitioner(s),

AFFIDAVIT OF SERVICE
OF INITIATING PAPERS

- against -

_____,
[YOUR NAME(S)]
Defendant(s)/Respondent(s)

-----X

STATE OF NEW YORK

COUNTY OF _____ ss.: [FILL IN COUNTY WHERE AFFIDAVIT
WAS SIGNED]

I, _____ [NAME OF
PERSON WHO SERVED PAPERS], being duly sworn, depose and say: I am over 18 years of age
and am not a party to this case. I reside at _____
_____ [SERVER'S ADDRESS]. On _____,
20____ [DATE OF SERVICE], at _____ A.M./P.M. [TIME OF DAY], I served the attached
papers, namely the _____ [IDENTIFY THE PAPERS
SERVED] on _____ [INSERT NAME
OF PARTY SERVED], a Defendant / Respondent [CIRCLE ONE] in this case. The address of the
place where the papers were served is: _____
[STATE LOCATION WHERE PAPERS WERE SERVED].

I served the papers in the manner indicated below **[CHECK OFF THE APPROPRIATE BOX]**:

1) ☐ INDIVIDUAL by delivering a true copy of each to the defendant personally; I knew the person served to be the person named in those papers. **[FILL OUT DESCRIPTION BELOW.]**

2) ☐ CORPORATION _____, a domestic corporation, by delivering a true copy of each to _____ **[IDENTIFY PERSON SERVED]**, who is _____

[IDENTIFY THE INDIVIDUAL TO WHOM THE PAPERS WERE DELIVERED AND HIS/HER JOB TITLE]; I knew the corporation to be that listed in the papers served and I knew the title of the person named above and that he/she was authorized to accept service.

3) ☐ SUBSTITUTED SERVICE by delivering a true copy of each to **[INSERT NAME OF PERSON]**, a person of suitable age and discretion, at the actual place of business, dwelling house, or usual place of abode in the state, and mailing, as indicated below.

☐ SUBSTITUTED SERVICE by affixing a true copy to the door at _____ which is the defendant's _____. I made prior attempts to serve at this location on the following dates and times: _____

MAILING (use with 3)

I also enclosed a copy of the above papers in a postpaid (already had the stamps on it), sealed envelope properly addressed to defendant at defendant's last known residence or actual place of business, located at _____

[ADDRESS], and I deposited the envelope in a post office depository under the exclusive care and custody of the United States Postal Service within New York State.

DESCRIPTION (use with 1, 2, or 3)

The individual I served had the following characteristics:

☐ Male ☐ Female _____ Hair color _____ Skin Color

AGE: _____ 21-34 yrs. _____ 35-50 yrs. _____ 51-61 yrs. _____ Over 61

WEIGHT: _____ 120-150 lbs. _____ 151-181 lbs. _____ Over 182 lbs.

☐ **MILITARY SERVICE** I asked the person to whom I spoke whether the defendant was in active service in the military of the United States or New York State in any capacity and I was told that he/she was not. Defendant did not wear a military uniform. I state upon information and belief that the defendant is not in the military service of the United States or New York State. The bases for my belief are the conversations and observations described above.

[SERVER'S NAME SIGNED]

[SERVER'S NAME PRINTED]

Sworn to before me on

this _____ day of _____, 20_____.

Notary Public